a Magistrate at the close of the case for the prosecution to determine whether or not the evidence tendered on behalf of the prosecution, if un-rebutted, has established the case against the prisoner beyond all reasonable doubt, and that the case of *The King v. Power*[2] is not applicable to the Magistrate's Courts of the Federation of Malaya.

In our opinion, the combined effect of the second schedule to the Criminal Procedure (Amendment) Ordinance, 1947, and section 61 of the Courts Ordinance, 1948, is to make the procedure laid down by section 173 of the Criminal Procedure Code for summary trials by Magistrates applicable to summary trials in the Sessions Courts. That being so, in our view, the appellant should have been acquitted and discharged at the close of the case for the prosecution in the Court below, because at that stage of the case the prosecution had failed to prove that the appellant was the person who had made one of the alleged contradictory statements which was an essential element of the charge.

For the reasons I have already given, the appeal is allowed and the conviction and sentence set aside. In view of the conclusion we have reached regarding the validity of the sanction to prosecute, it is unnecessary for us to deal with the other point raised by Briggs, J. in his Certificate of Grounds of Judgment.

Appeal allowed.

PUBLIC PROSECUTOR v. TAN THOY.

[Orig. Crim. Juris. (Taylor, J.) September 27, 1951]

[K.L. — Selangor Criminal Trial No. 38 of 1951]

Emergency Regulations — Regulation 6A(1) — "Consorting" — Meaning of.

The word "consorting" in the Emergency Regulations includes associating with a bandit, or bandits, not necessarily the same individuals, continuously over a period or on a series of separate occasions, or for a single short period with community of purpose.

Case referred to :—

(1) *Tan Choon Chuar & Anor. v. Public Prosecutor* (1950) M.L.J. 200; 1 M.L.R. pp. 155 & 216.

CRIMINAL TRIAL.

D. M. K. Grant (D.P.P.) for the Public Prosecutor.

Accused in person.

The facts appear sufficiently from the judgment.

Cur. Adv. Vult.

Taylor, J. : — This accused, who is aged 37 and virtually a widow, her husband having been missing since the Japanese occupation, was charged under Emergency Regulation 6A(1) with consorting with a named person who had recently acted against public order, an offence punishable with imprisonment only and therefore tried without Assessors. She was not defended by an advocate.

The case, shortly, was that a Police party, acting on information, went to her house in the middle of the night, in disguise, and asked for another man by name; they did not know that man by sight but believed him to be a bandit; she said that he was not there. She then led the party into a coffee plantation a short distance from her house where, in response to her call, two or three persons emerged with torches. The Police immediately opened fire killing the man named in the charge who was found with a handgrenade within arm's length; apparently, he had been on the point of throwing it when he was hit. A blood trail indicated that another man had been wounded but he was not found. The third man, if there was one, escaped. There is evidence indicating that the second or third man was the son of the accused but as he escaped, this could not be established.

At the close of the case for the prosecution, I called on the Deputy Public Prosecutor to show that what the evidence disclosed amounted to consorting. The term is not defined in the Regulation and therefore must have its ordinary plain English meaning. From time to time judges have explained the meaning of the term in these Regulations when summing up to Assessors but such rulings are necessarily limited to the facts of each individual case and, unless a number of them could be collected, would afford little assistance. I do not know of any reportable expressions of opinion and no authorities of any kind were cited.

"Consorting" must mean something more than "being in company with" because the latter is a distinct offence under the Regulation. The Deputy Public Prosecutor submitted that the relationship between the accused and the armed person need not go beyond mere acquaintance, and with that I agree but the association must be either more intimate or more sustained than mere acquaintanceship involves.

The word is derived from "sortem" but its meaning has gradually moved so far from the Latin that the etymology does not assist. In ordinary English, "consort" as a noun is used in the good sense, meaning a spouse, but "consort" as a verb is generally used in

a bad sense, either of improper association between the sexes or of associating with persons of bad character. A libellous person wrote of Mr. Gladstone that he consorted with loose women; this could not have been supported by proving a single indiscretion but it would have been justified had there been evidence of association with several women, even though he had not been with any one woman on more than one occasion. Similarly Jeffreys, L.C., in his younger days, consorted with disreputable attorneys. There is another plain English sense — "a ship and her consort" — referring to two ships cruising together for mutual protection.

In my opinion, the word "consorting" in these Regulations is best understood with reference to these three meanings. The typical case of a cook (of either sex) or a sewing woman, working in a bandit camp, corresponds to the first ordinary meaning, spouse. The case of a person who lives outside but takes part in supplying goods or information and meets either the same or different bandits on different occasions, corresponds to the second meaning. The third meaning is of less frequent applicant but it arose in *Tan Choon Chuar & Anor.*[1] reported on another point there, two young men went shopping together, visited a cinema, and so on through the evening in the course of which one of them was said to have thrown a grenade; they were admittedly neighbours and acquaintances but there was no evidence that they acted together on any other day; it was a single venture association but went beyond being found in company; the Assessors were directed that this amounted to consorting; the prisoners were convicted and their appeal was dismissed. The fact that they were subsequently pardoned on the ground of doubt as to whether they were correctly identified with the grenade thrower does not affect the point of law. Thus "consorting" covers the case of a person who associates with a bandit or bandits, not necessarily the same individuals, continously over a period, or on a series of separate occasions, or for a single short period with community of purpose.

What I have said is not meant to be exhaustive; in my view, it would be quite wrong to attempt a judicial definition of a term which the Legislature has left undefined but as counsel for the Public Prosecutor intimated that the meaning of the word had caused difficulty in the farming of charges, I have stated the result of my experience which may be of some assistance in applying the Regulations in the future. I do not mean that specific evidence of either continuity or frequency is indispensable but where actual association on one occasion only is proved, consorting will not be made out unless the circumstances strongly indicate that the occasion was either one of a series or one point of time in a continuous association.

Applying these ideas to the present case the evidence, at its highest, shewed only that bandits had called at the house of the accused on two occasions but not that they had ever stayed there or that she had ever gone out with them. In short, it indicated that her son was either a bandit himself or a person who consorted with bandits but it did not show that she herself consorted with them. I therefore acquitted her without calling on her for her defence — on the charge of consorting.

* * * * * * *

[**Editorial Note:** — The remainder of the judgment dealt with questions of fact. The prisoner was convicted of failing to report the presence of armed men but she withdrew her appeal.]

Accused acquitted on the charge of consorting.

In re TAN LIAN BOH, DECD. WEE SIN CHOE & ANOR. v. THE OFFICIAL ASSIGNEE & THE ATTORNEY-GENERAL.

[Orig. Civ. Juris. (Brown, J.) September 27, 1951]

[Singapore — Originating Summons No. 136 of 1940]

Will — Construction of — Partial Intestacy — Effect of provision in a Will excluding widow.

A testator by his Will directed that after his death his second wife Khoo Kow Khiah shall be paid as soon as possible a sum of $25 only and henceforth she shall be severed from all connections or concerns and be forever disallowed to live and interfere with his house properties.

There was an intestacy in respect of the testator's residuary estate and the question arose as to whether the said Khoo Kow Khiah is by the terms of the testator's Will precluded or not from sharing the deceased's residuary estate on an intestacy.

Held, that on the true construction of the Will the said Khoo Kow Khiah was precluded.

Pickering v. Stamford[1], **Naismith v. Boyes**[2] and **Re Holmes**[4] distinguished; **Bund v. Green**[5] followed.

Cases referred to :—

(1) *Pickering v. Stamford* 30 E.R. 1038.
(2) *Naismith v. Boyes* (1899) A.C. 495.
(3) *Johnson v. Johnson* 49 E.R. 361.
(4) *Re Holmes* 62 L.T. 383.
(5) *Bund v. Green* 12 Ch. D. 819.

ORIGINATING SUMMONS.

Harry Lee Wee for the plaintiffs-trustees.
T. Kulasekaram for the Official Assignee.
Eric Choa for Tan Keok Leng (a son).
Philip Hoalim for the widow's personal representatives.